IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1845 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

GOVINDBHAI PITHABHAI

Versus

AHMEDABAD MUNICIPAL CORPN

Appearance:

1. Special Civil Application No. 1845 of 1988

MR TR MISHRA for Petitioner No. 1-6

MR BP TANNA for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 14/09/2001

C.A.V. JUDGEMENT

1. This petition under Article 226 of the Constitution was filed by six petitioners who worked under the respondents in its zoo as animal keeper, garden labour or safai mazdoor since the year 1983-84. They approached this Court with the prayer that their services

may be regularised and they may be posted as permanent class IV employees of the respondent-Corporation in time scale of pay of Rs.750-950 from the date when similar employees junior to them were granted such benefits. It is alleged that seven employees named in the petition were juniors to the petitioners and were made permanent in class IV categories in the said scale of pay while the petitioners were subjected to hostile discrimination and denied equal pay for equal work.

2. During the pendency of the petition since 1988, all the petitioners, except petitioners Nos.4 and 6, are made permanent in the year 1988 or 1989 and, therefore, no prayer is pressed in their behalf. As for the petitioners Nos.4 and 6, they were originally employed as part-time temporary workers. They were denied regularisation and permanency even as they were continued in service.

3. According to the petition, employees in the zoo of the respondent were initially appointed as part-time daily rated employees and then, as and when vacancy arose, they were appointed as full time daily rated employees till they could be appointed on vacant permanent posts in class IV category. It is also admitted in the reply affidavit that services of the petitioners Nos.1, 2 and 3 were regularised as they worked for 900 days in five years but the case of the petitioners Nos.4 and 6 was not considered as they were appointed and continued as part-time temporary workers. The petitioners, therefore, pointed out specific instances of other part- time sweepers in the same Department who were appointed on part time basis, converted as full time temporary workers and then made permanent. Facing these facts, the Zoo Superintendent has filed a further affidavit to state that one such part time employee, namely, Dungarsi Hukamsi, was regularised pursuant to an interview by a special committee which did not select petitioners Nos.4 and 6 because they were totally illiterate. In this context, it is stated on oath on behalf of the petitioner, and not denied on behalf of the respondent, that two other similarly situated junior employees, namely, Swaminarayan Ramsnehi and Rajendrakumar Shukla, were originally part- time employees and happen to be the son of the Office Attendant of the zoo and the son-in-law of the Zoo Superintendent respectively. It is also stated on oath that two other safai workers who were made permanent in the year 1998 were also totally illiterate. Thus, a case of mala fide and hostile discrimination against the petitioners Nos.4 and 6 is made out.

4. The respondents have failed to make out or substantiate any valid reason for discriminating against the petitioners Nos.4 and 6 and denying them the benefits of regularisation even as they continued to work under them since the year 1984. The respondent being an instrumentality of the State and an institution of local self-government, it cannot deny to any person equality of opportunity in any matter relating to employment or appointment. The petitioners Nos.4 and 6 are, therefore, entitled to the benefits of being converted into full time employees and then regularisation from the dates when the other similarly situated junior employees were granted such benefits. The learned counsel for the petitioners, however, fairly conceded that as far as arrears of monetary benefits were concerned, they would not press for full payment of difference of wages by way of arrears in view of the fact that the petitioners concerned had continued to actually work on part- time basis. It transpires from the documents produced by the respondents that the employes junior to the petitioners were given regular postings on temporary posts by the order dated 21.10.1986 and they were made permanent in the time scale of pay with effect from 1.12.1989. The petitioners Nos.4 and 6 are, therefore, required to be made permanent with effect from 1.12.1989 in the applicable pay scale and their wages are required to be notionally fixed accordingly. In view of the fact that even totally illiterate safai workers were made permanent on 29.8.1998 and despite the respondents having been made aware of the same and despite pendency of this petition, the respondents had not by itself regularised the services of the petitioners, the petitioners Nos.4 and 6 are required to be paid the difference of wages arising from their being made permanent with effect from 29.8.1998.

5. Accordingly, the petition is allowed and the respondents are directed to regularise and treat the petitioners Nos.4 and 6 as permanent full-time class IV employees with effect from 1.12.1989 and to pay them the arrears of wages with effect from 1.9.1998. The respondents are also directed to pay Rs.500/- by way of costs to each of the two petitioners. Rule is made absolute accordingly.

Sd/-

(KMG Thilake) (D.H.Waghela, J.)